IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

INCOME TAX APPEAL NO. 828 OF 2002

M/s. Unique Pharmaceuticals Laboratories Limited — Appellant

vs.

Dy. Commissioner of Income Tax, Special Range-3-,Bombay. — Respondent

Mr.A.K.Jesani i/b. Mr.K. Gopal for the appellant.

Ms.S.V. Bharucha Mr.Pankaj Kapur for the respondent.

CORAM : R. M. LODHA & J.P. DEVADHAR,JJ.

DATED : 15th September 2004

P.C.

Heard.

2. The Tribunal in the impugned order observed thus:

> "On a query raised by the Assessing Officer, no attempt was made by the assessee to establish that interest bearing borrowals were not utilised for giving interest free advances to its employees. What was stated before the Assessing Officer was that the amounts are very meager, compared to the turnover and salary bill and that the practice of granting interest free loans to the staff members had salutary effect on the staff and they feel that the management is at their back. The same explanation was reiterated, though in different words, stating that interest free advance was given to the workers to maintain cordial relations with them. The Revenue Authorities have recorded the finding that no business purpose has been served by advancing the interest bearing funds to the employees free of interest. This finding could not be assailed by bringing on record evidence to prove the contrary. If part of the interest bearing borrowed funds have been utilised for non business purposes and the Revenue Authorities record a finding to that effect which finding remains uncontroverted, impugned disallowance has to be sustained. As rightly

> contended by the learned Departmental Representative that it was never pleaded before the Revenue authorities that interest free advance to the employees were given out of reserve and surplus. Therefore, this new plea cannot be entertained."

3. The consideration of the matter by the Tribunal does not suffer from legal infirmity.

4. No substantial question of law arises.

5. The judgment cited by the learned counsel for the appellant in the case of V.M. Salgaoncar & Bros.Pvt. Ltd. vs. Commissioner of Income Tax, 243 ITR 383 has no application to the facts of the present case.

6. Dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)